IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.358 of 2006

Reserved on 29.11.2007

Date of decision 20.12.2007

Ramesh Kumar Petitioner

Vs.

Baba Balak Nath Temple Trust
and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Bhuvnesh Sharma, Advocate.

For the respondents: Mr.K.D.Sood, Advocate.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was appointed as Lecturer Economics in respondent No.1 College on 24.11.1997. He was kept on probation for a period of two years from the date of his joining the post. He was put in the regular pay scales of Rs.1800-3200. He was directed to join his duties on or before 8.12.1997. He became entitled for grant of annual increment after completion of one year service with effect from 24.11.1998, but the same was not released to him. Vide office order dated 8.4.2003 the petitioner's services were directed to be treated as stop gap arrangement. He preferred an appeal to the respondent No.2 to grant annual increment by

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[1] Whether reporters of local papers are allowed to see the judgment? No.

treating his appointment on regular basis with effect from 24.11.1997 onwards. The Sub Divisional Officer (C) Barsar-cum-Chairman Trust Temple Deothsidh recommended the case of the petitioner to the Deputy Commissioner, Hamirpur-cum-Temple Commissioner on 16.6.2003.. He has specifically recommended that the petitioner will be entitled to the first annual increment with effect from March, 1998 and the second annual increment in the same sequence. The necessary permission was not accorded by the Deputy Commissioner, Hamirpur-cum-Temple Commissioner which led to the petitioner making fresh representation to him on 3.9.2003. The recommendations made by the Sub Divisional Officer (C) Barsar-cum-Chairman Trust Temple Deothsidh were turned down by the Deputy Commissioner, Hamirpur-cum-Temple Commissioner on 1.6.2006.

Mr.Bhuvnesh Sharma, learned counsel appearing on behalf of the petitioner had strenuously argued that the petitioner was appointed on regular basis as per the appointment letter issued on 24.11.1997. He then contended that the petitioner was entitled to get his annual increment with effect from 1998 onwards and the action of the respondents in not releasing the same is illegal and arbitrary and thus violative of Articles 14 and 16 of the Constitution of India. Mr.K.D.Sood, learned counsel appearing on behalf the respondents had supported the action taken by the Deputy Commissioner, Hamirpur-cum-Temple Commissioner dated 1.6.2006.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

It is evident from the plain reading of appointment letter dated 24.11.1997 that the petitioner has been offered post of lecturer in the subject of Economics on regular basis. He was placed in the regular pay scales of Rs.1800-3200 and put on probation for a period of two years from the date of his joining. He was directed to join his duties on or before 8.12.1997. The petitioner was entitled to get all the benefits emanating from Annexure P-1 dated 24.11.1997.

Mr. K.D.Sood had argued that in fact one Sh.Satish Kumar was selected on regular basis as Lecturer in the subject of Economics and he had joined his duties on 16.11.1997 but proceeded on extra ordinary leave to join his duties as lecturer in Govt. College Hamirpur. He did not join his duties till 20.2.1999 and thereafter the petitioner was directed to be appointed on regular basis with effect from 21.2.1999 only and not with effect from 24.11.1997 as claimed by the petitioner. Mr.K.D.Sood had further submitted that the petitioner was in the waiting list at the time when the panel was drawn for filling up the post of Lecturer in the subject of Economics in the year 1997. He further contended that It is in this background that the Sub Divisional Officer (C) Barsar-cum-Chairman Trust Temple Deothsidh has passed order on 8.4.2003 by treating the services rendered by the petitioner with effect from 25.11.1997 to 20.2.1999 as stop gap arrangement. The mistake committed by the Management was rectified and consequently Sub Divisional Officer (C) Barsar-cum-Chairman Trust Temple Deothsidh had recommended the case of the petitioner to accept the resignation of Sh.Satish Kumar with effect from 11.11.1997 and to regularize the period of petitioner with effect from 25.11.1997 with all consequential benefits. These recommendations have been rejected by the Deputy Commissioner, Hamirpur-cum-Temple Commissioner without due application of mind on 1.6.2006. The only

explanation given in the communication dated 1.6.2006 is that the recommendations could not be accepted in view of the legal opinion received by him. The legal opinion received has not been discussed in the communication dated 1.6.2006. The Deputy Commissioner, Hamirpur-cum- Temple Commissioner was bound to assign reasons for not accepting the recommendations made by the Sub Divisional Officer (C) Barsar-cum-Chairman Trust Temple Deothsidh on 16.6.2003.

When the appointment letter offered to the petitioner is read as a whole the only conclusion which can be drawn is that it was a regular appointment. The petitioner had joined his duties with effect from 25.11.1997. He had started discharging the duties of Lecturer with effect from 25.11.1997 onwards and this period cannot be obliterated only for the reason that one Satish Kumar who had earlier joined on 16.11.1997 had proceeded on extra ordinary leave to join his duties as lecturer in Government College Hamirpur. The petitioner's case was to be considered independently vis-à-vis Satish Kumar who was appointed at two places simultaneously i.e. in the respondent college as well as in Government job. In fact Satish Kumar had started discharging his duties at his new place of posting i.e. Government College, Hamirpur with effect from 16.11.1997 itself. This fact was within the knowledge of the respondents and despite that the petitioner's annual increments have not been released which fell due with effect from 1998 onwards. The annual increment to which the petitioner is entitled is a property within the meaning of Article 300 A of the Constitution of India and he could not be deprived of the same.

The upshot of the above discussion is that the petitioner has been appointed on regular basis with effect from 24.11.1997 and is entitled to all the consequential benefits, including annual increments etc.

Consequently, this writ petition is allowed. Annexure R-5 dated 1.6.2006 is quashed and set aside. The respondents are directed to treat the petitioner to be appointed on regular basis as Lecturer in the subject of Economics with effect from 24.11.1997 with all consequential benefits flowing from such appointment, including the release of annual increments within a period of eight weeks from today.

December 20, 2007 (g) **(Rajiv Sharma), J.**